



1459 Washington St.
Muscatine, IA 52761-5040
(563) 263-8933
Fax (563) 263-2127

Public Works

City Transit
263-8152

MEMORANDUM

Equipment Maintenance
Roadway Maintenance
Collection & Drainage
Building & Grounds
Engineering

To: Greg Mansager, City Administrator
CC: Randy Hill, Public Works Director
FROM: Jim Edgmond, City Engineer
DATE: June 16, 2015
RE: Mulberry Ave. from Palms Drive to Houser Street Reconstruction Project
Property Acquisition

INTRODUCTION:

The purchase of two lots belonging to John Lazio that will be needed for the Mulberry Project were previously discussed with the City Council.

BACKGROUND:

A Real Estate Purchase Agreement was prepared by City staff and presented to the owner to review and sign. The owner has signed the agreement and it is attached to this memo.

RECOMMENDATION/RATIONALE:

Recommend to city council to sign attached agreement and proceed to purchase the two lots per the purchase agreement.

BACKUP INFORMATION:

Attachment 1 Real Estate Purchase Agreement

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (the "Agreement") is deemed made on the date the last of the parties executes this Agreement (the "Effective Date") by and between John A. Lazio, and spouse, if any, whose address for the purposes of this Agreement is 820 Clubhouse Road, Unit 1F, North Liberty, Iowa 52317 (hereafter referred to as the "Seller") and the City of Muscatine, Iowa, whose address for the purposes of this Agreement is 215 Sycamore Street, Muscatine, Iowa 52761 (collectively hereafter referred to as the "Buyer.")

RECITALS

A. Seller is the owner of the following legally described property situated in Muscatine County, Iowa:

Lots 1 and 2 in Riverbend First Addition, an Official Plat, now included in and forming a part of the City of Muscatine, Muscatine County, Iowa.

Subject only to easements, restrictions and covenants of record (collectively referred to as the "Property");

B. Buyer desires to purchase from Seller and Seller desires to sell to Buyer the Property;

C. Buyer and Seller desire to set forth the obligations, restrictions, limitations, and conditions upon which the Property will be conveyed by Seller to Buyer.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, each for the other, Buyer and Seller agree as follows:

1. Sale of Property. Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, for the Purchase Price set forth below and on the terms and conditions set forth in this Agreement, the Property. For purposes of this Agreement, Property shall be deemed to mean, on a collective basis: (a) the parcel of land described above (the "Land"), together with all rights, easements and interests appurtenant thereto; (b) all improvements located on the Land, if any.

2. Purchase Price. Seller, in consideration of the mutual covenants and agreements contained herein, agrees to sell to Buyer and Buyer, in consideration of the mutual covenants and agreements contained herein, agrees to purchase the Property from Seller for the sum of \$25,000.00 (the "Purchase Price"). The Purchase Price shall be paid by Buyer to Seller as follows:

2.1. Earnest Money. \$0.00 paid herewith as earnest money (hereafter referred to as the "Earnest Money") shall be payable by Buyer to Buyer's attorney, Patrick T. Burk, Brick Gentry P.C., West Des Moines, Iowa to be held in trust pending possession, settlement and closing (hereinafter referred to as "Closing"). The Earnest Money shall be applied to the Purchase Price of the Property.

2.2. Balance of Purchase Price. The balance of the Purchase Price shall be paid by Buyer to Seller, in good and immediately available funds by wire transfer or cashier's check, at the time of Closing.

3. Abstract and Title. Seller, at its expense, shall promptly obtain an abstract of title to the Property continued through the date of acceptance of this Agreement and deliver it to Buyer's attorney for examination. It shall show marketable title in Seller in conformity with this Agreement, Iowa law, and title standards of the Iowa State Bar Association. The Seller shall make every reasonable effort to promptly perfect title. If Closing is delayed due to Seller's inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds the Agreement after giving ten days written notice to the other party. The abstract shall become the property of Buyer when the Purchase Price is paid in full. Seller shall pay the costs of any additional abstracting and title work due to any act or omission of Seller, including transfers by or the death of Seller or their assignees. The abstract shall be obtained from an abstracter qualified by the Guaranty Division of the Iowa Housing Finance Authority.

4. Permitted Exceptions. The Property shall be conveyed by Seller to Buyer subject only to the local municipal zoning ordinance, real estate taxes not yet due and payable, easements and restrictions of record and other exceptions to title that are of record, approved by Buyer and those other matters as hereinafter provided (the "Permitted Exceptions").

5. Closing. The Closing of this transaction shall occur as soon as reasonably practicable as agreed in writing by the parties (hereinafter referred to as the "Closing Date") at a location mutually agreed upon by the parties herein. Time is of the essence in this Purchase Agreement.

6. Real Estate Taxes. Seller shall pay all real estate taxes assessed against the Property for all periods through the date of Closing, including a prorated share of the real estate taxes due for the tax period in which the Closing takes place (payable in the subsequent fiscal tax year). Real Estate taxes which are not delinquent at the time of Closing and which Seller is responsible to pay under the terms hereof, shall be credited against the Purchase Price at Closing.

7. Special Assessments. Buyer shall be responsible for all special assessments with respect to the property.

8. Commission. Seller and Buyer each represent and warrant to the other that no brokerage commission, finder's fee or other compensation is due and payable with respect to the transaction contemplated by this Agreement. Buyer represents to Seller that it knows of no fee, commission or payment due to any broker, finder, agent or other person or entity, in connection with the transactions contemplated. Seller represents to Buyer that it knows of no fee, commission or payment due to any broker, finder, agent or other person or entity, in connection with the transactions contemplated herein. Seller and Buyer each, one to the other, indemnify,

protect, defend and hold the other harmless from and against all losses, claims, costs, expenses and damages (including but not limited to reasonable attorney fees) resulting from the claims of any broker, finder or other such party claiming, by, through or under the acts or agreements of the indemnifying party. The warranties and obligations of the parties pursuant to this paragraph shall survive the termination of the Closing. Should any third-party claim a commission is due and owing, both parties agree to cooperate in challenging such claim. Such cooperation shall not be deemed to alter the indemnifications contained in this paragraph in any manner.

9. Warranties and Representations of Seller. Seller warrants and represents to Buyer that it has the full right, power and authority to sell and convey the Property to Buyer as provided in this Agreement and to carry out the Seller's obligations hereunder. All requisite partnership, corporate or other actions necessary to authorize Seller to enter into this Agreement and to perform its obligations hereunder have been taken; the joinder of no person or entity other than Seller will be necessary to sell the Property fully and completely to Buyer at Closing except as otherwise set forth and provided herein; and the execution and delivery of this Agreement and the consummation of the transaction herein contemplated will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage loan agreement or instrument to which Seller is a party or by which the Property is bound. Other than the interests noted elsewhere in this Agreement, if any, Seller represents and warrants to Buyer that there are no adverse or other parties in possession of the Property or any part thereof. No party has been granted any license, lease or other right or interest relating to the use or possession of the Property, or any part thereof, other than as expressly provided for herein or of record or which will be terminated concurrently with Closing. At Closing, a Groundwater Hazard Statement will be filed by Sellers regarding the following: (i) wells; (ii) solid waste disposal; (iii) hazardous wastes; and (iv) underground storage tanks located on the Property. These representations contained in the Groundwater Hazard Statement shall be for the benefit of the Buyer who shall be entitled to rely upon said representations.

10. Warranties and Representations of Buyer. Buyer warrants and represents to Seller that it has the full right, power and authority to acquire the Property from Seller as provided in this Agreement and to carry out the Buyer's obligations hereunder. All requisite actions necessary to authorize Buyer to enter into this Agreement and to perform its obligations hereunder have been taken; the joinder of no person or entity other than Buyer will be necessary to acquire the Property fully and completely from Seller at Closing; and the execution and delivery of this Agreement and the consummation of the transaction herein contemplated will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage loan agreement or instrument to which Seller is a party or by which Buyer or the Property is bound.

11. Conveyance Documents. Seller shall convey the Property to Buyer by a general warranty deed, conveying to Buyer good and merchantable fee simple title to the Property, subject only to such title exceptions and encumbrances as provided herein or as have been approved by Buyer (the "Permitted Exceptions") and in a form reasonably acceptable to counsel for Seller and Buyer.

12. Closing Costs. Seller shall pay all documentary and transfer taxes and recording fees necessary to cure title objections of the Buyer. Buyer shall pay the recording fees in connection with the Deed conveying title to Buyer, and any financing documents encumbering or

relating to the Property and other documents Buyer desires to record. Buyer shall pay the premium for issuing the Iowa Title Guaranty or title policy (if any) described herein. Each party shall be responsible for paying its own attorney fees. Buyer shall cause an appropriate closing statement to be prepared in advance of Closing for proper execution by both Buyer and Seller consistent with the terms of this Agreement. Buyer shall be responsible for any settlement fees associated with Closing.

13. Section 1031 Exchange. Buyer and Seller each reserve the right, at the sole election of each Buyer and Seller, to structure this transaction as an exchange of like-kind properties under Section 1031 of the Internal Revenue Code and the regulations and proposed regulations thereunder. If either Buyer or Seller so elects, each shall reasonably cooperate with the other, provided any such exchange is consummated pursuant to an agreement that is mutually acceptable to Buyer and Seller and which shall be executed and delivered on or before the Closing Date and provided such Section 1031 exchange does not delay the Closing Date. Each party shall in all events be responsible for those costs and expenses related to their respective Section 1031 exchange (including but not limited to all attorney fees and costs).

14. Possession; Risk of Loss. Subject to the terms of the existing Ground Lease between Seller and Buyer, all risk of loss with respect to the Property shall remain with Seller until Closing of the purchase of the Property. Seller shall preserve and care for the Property until Closing in a manner consistent with its prior practice.

15. Existing Tenancy or Other Interests. Seller confirms the Property is not subject to an existing lease or other possessory interest not shown of record. If such an interest exists, Seller agrees to provide documentation executed by the party holding such interest in which such interest is terminated prior to Closing.

16. Lien Waivers. If at Seller's (or its affiliates) request or direction any person or entity has supplied material or services for the Property within six (6) months prior to the Effective Date of this Agreement which may form the basis of a Mechanic's Lien being filed against the Property, then the Seller shall provide copies of written lien waivers from all such persons or entities supplying material or services prior to the Closing Date. Seller agrees to indemnify and hold Buyer harmless from any such claims which arise because of the filing of Mechanic's Liens for work contracted for by Seller prior to the Closing Date and specifically reserves the right to pursue an action in connection therewith, which right shall survive Closing.

17. Pending Actions. Seller has no notice of any action, litigation, proceeding, or investigation against itself, related entities, its partners, or the Property, which would affect the Property or the right of Seller to sell and convey the Property, or any action, litigation, proceeding, or investigation, including without limitation, any eminent domain proceeding which would result in any lien, claim, right, or interest in the Property in favor of any third party.

18. Notices. Neither party shall have the right to terminate this Agreement or seek any remedy for a breach hereof by the other party unless such breach continues for a period of thirty (30) days following written notice by the party seeking to pursue such remedy, specifying the occurrence and description of such default under this Agreement and unless the party given such notice shall have failed to commence to take such steps as are necessary to cure such breach or default as soon as possible (or having so commenced such steps to cure shall thereafter have

failed to proceed diligently and with continuity to remedy the same). All notices, demands, writings, supplements, or other documents which are required or permitted by the terms of this Agreement to be given to any party shall be delivered in person, or shall be deposited in the United States Mail, postage prepaid, return receipt requested, addressed at the addresses specified above and shall be effective upon such deposit.

19. Assignment; Agreement Binding on Successors; Survival of Provisions. This Agreement may not be assigned or transferred by any of the parties without the express written consent of the other. This Agreement, and amendments, if any, and all representations, warranties, indemnification obligations, rights and duties hereunder, shall survive the Closing and shall be fully binding at all times against Seller, and Buyer as well as any and all of its or their successors in interest, assigns or transferees.

20. Default; Remedies of the Parties.

20.1 Buyer's Remedies for Seller's Default. If (a) each of the conditions precedent set forth in this Agreement have been satisfied or waived prior to the Closing Date and (b) Seller fails or refuses to timely convey the Property to Buyer in accordance with the terms and conditions of this Agreement, except on account of a default hereunder by Buyer, Buyer may elect one of the following remedies (a) be entitled to terminate Buyer's obligations under this Agreement by written notice to Seller; (b) be entitled to specific performance of this Agreement; or (c) any other remedies available at law or equity.

20.2. Seller's Remedies for Buyer's Default. If (a) each of the conditions precedent set forth in this Agreement have been satisfied or waived prior to the Closing Date and (b) Buyer fails or refuses to timely purchase the Property and Close in accordance with the terms and conditions of this Agreement, except on account of a default hereunder by Seller, Seller may elect one of the following remedies (a) be entitled to terminate Seller's obligations under this Agreement by written notice to Buyer; (b) be entitled to specific performance of this Agreement; or (c) any other remedies available at law or equity.

20.3 Attorney Fees. The non-defaulting party shall be entitled to collect costs and attorney fees from the party in default.

21. Time. Time is of the essence in the performance of each party's obligations hereunder.

22. No Waiver. Subject to the deemed approvals under this Agreement, no waivers by any party of the performance or satisfaction of any covenant or condition shall be valid unless in writing, nor shall it be considered to be a waiver by such party of any other covenant or condition hereunder.

23. Entire Agreement. This Agreement contains the entire agreement between the parties regarding the Property and supersedes all prior agreements, whether written or oral, between the parties regarding the same subject. This Agreement may only be modified by subsequent written agreement signed by the party to be charged.

24. Counterparts and Effectiveness. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement, and this Agreement shall only be effective if a counterpart is signed by both Buyer and Seller.

25. Severability. In the event any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

26. Survival of Warranties. Any warranties, covenants and representations contained in this document shall survive the execution of this Agreement and any other documents, including the Warranty Deed given by Seller to Buyer to consummate this transaction, shall not be merged into such documents.

27. Attorney Fees. In the event of default by either party pursuant to any of the terms of this Agreement, the prevailing party in any litigation or enforcement action shall be entitled to reimbursement by the defaulting party for any of the prevailing party's reasonable attorney fees, court costs, and other associated costs of enforcement.

28. Governing Law, Construction. This Agreement shall be construed pursuant to the laws of the State of Iowa. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid. If any such provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating or otherwise affecting the remaining provisions of this Agreement.

29. Headings. Article and section headings used in this Agreement are for the convenience of the parties only and shall not affect the construction of this Agreement.

30. Further Assurances. At or after Closing, the parties shall prepare, execute and deliver, at their respective expense, such additional instruments and other documents and shall take or cause to be taken such other action as is reasonably requested by the other party at any time or from time to time in order to effectuate and comply with all the terms of this Agreement and the transactions contemplated hereby.

{SIGNATURE PAGE TO FOLLOW}

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

SELLER:
John A. Lazio

By: 
John A. Lazio

BUYER:
City of Muscatine, Iowa

By: _____
Gregg Mandsager, City Administrator

Tax Identification Number: 478-82-2254

Dated: 6/17/15

Tax Identification Number: _____

Dated: _____